THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.7894 OF 2002

DISPOSED OF ON 22-08-2005.

BETWEEN:

Mohd.Farooq Sultan …… Petitioner

And

The Joint Collector, Hyderabad and others….Respondents

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.7894 OF 2002

O R D E R :

1. This Writ Petition has been filed by the petitioner assailing the order dated 30-3-2002 passed in proceedings No.B2/6127/1998 on the file of Joint Collector, Hyderabad District-1st respondent.

2. The facts of the case, in brief, are :

One Gulam Mahboob was the original inamdar in respect of land admeasuring Ac.3-24 guntas situated in S.No.93 of Khandikal Village, Bandlaguda Mandal, Hyderabad. He had a brother by name Gulam Dastagir who died issueless. He had two sons namely Gulam Mohiuddin and Mohammed Hameedullah and both of them died. The petitioner and his younger brother i.e. 6th respondent are legal heirs of Mohd. Hameedullah. Respondents 3 to 5 are the sons of late Gulam Mohiuddin. Respondents 3 to 5 have filed a claim petition before the Revenue Divisional Officer, Hyderabad Division – 2nd respondent for occupancy rights under the provisions of A.P.(T.A.) Abolition of Inams Act, 1955. Occupancy certificate came to be granted on 13.6.1978 under sections 8 and 10 of the Act. Thereupon, the petitioner and 6th respondent filed an appeal before the Collector, Hyderabad which came to be allowed remanding the matter for re-enquiry vide order dated 18.9.1984. 2nd respondent, on remand, conducted enquiry and passed an order on 16.11.1992. The order passed by 2nd respondent came to be challenged in an appeal before 1st respondent. Since there was a delay of 632 days in filing the appeal before the Joint Collector, an application to condone delay in filing the appeal was filed. The 1st respondent dismissed the application and thereby refused to entertaint he appeal. The petitioner filed W.P.No.20689 of 1997 challenging the order of 1st respondent dated 11.7.1997 and the said writ petition came to be disposed of on 4.7.2000. The relevant portion of the order passed in the writ petition reads as follows:

" …From the order I found that the 1st respondent did not consider the ground raised in the application for the condonation of the delay.

> He only referred to the absence of the counsel whenever the case was posted. That is not a proper consideration while adjudicating the matter for condonation of delay. The authority is required to consider the grounds raised in the application for condonation of delay and whether such grounds justify condonation of delay. The 1st respondent has not properly considered the matter. Under these circumstances, I am satisfied that the order is illegal and contrary to the settled principles.

Accordingly, the order is set aside and the matter is remitted back to the 1st respondent for fresh consideration after giving notice to the parties concerned and decide the application for condonation of the application afresh on the basis of the grounds raised in the application for condonation of the delay and pass appropriate orders within a period of two months from the date of receipt of a copy of this order."

On remand, the 1st respondent took up the matter and passed an order on 30.3.2002 refusing to condone delay and thereby dismissing the application filed to condone delay in filing the appeal. Assailing the order, the petitioner filed this writ petition.

3. Heard Sri.N.Subba Reddy, learned senior counsel appearing for the petitioner, learned Government Pleader for Revenue appearing for respondents 1 and 2 and Sri.Tulsi Reddy, learned counsel appearing for respondents 3 to 6.

4. Learned senior counsel appearing for the petitioner submits that 2nd respondent heard arguments on 12.11.1992 and reserved the case for orders and subsequently he pronounced the orders on 16.11.1992 without notifying the date of pronouncement of the order or served copy of the order after its pronouncement. He further submits that the petitioner came to know of passing of the order only in August, 1994 and thereafter obtained certified copies and filed the appeal before the 1st respondent along with an application for condonation of delay of 632 days. It is also submitted by him that delay of 632 days has been properly explained and thus 1st respondent ought to have accepted the reasons offered by the petitioner and entertained the appeal for disposal on merits. In support of his submissions reliance has been placed on the decision of Supreme Court in HARISH CHANDRA V. DY.L.A.OFFICERand the decision of madras High Court in MUTHIAH CHETTIAR V. I.T.COMR., MADRAS. In the first cited decision, the Supreme Court has held that

where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. So the knowledge of the party affected by the award made by the Collector under S.12 of the Land Acquisition Act, 1894, either actual or constructive is an essential requirement of fair play and natural justice. Therefore, the expression "the date of the award" used in proviso (b) to S.18(2) of the Act must mean the date when the award is either communicated to the party or its know by him either actually or constructively. It will be unreasonable to construe the words from the date of the Collector's award used in the proviso to S.18 in a literal or mechanical way. In the second cited decision, the Madras High Court held that if a person is given a right to resort to the remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore, must be presumed to have had knowledge of the order.

5. Learned counsel appearing for respondents 3 to 6 submits that the petitioners having appeared before the 2nd respondent is deemed to have knowledge of the date of pronouncement of the order on 6.11.1992. Therefore, 1st respondent is justified in dismissing the delay condonation petition.

6. The only issue that survives for consideration is whether the petitioner has given sufficient reasons to condone the delay in filing the appeal before the 1st respondent against the order of the 2nd respondent.

7. The docket proceedings of file No.B/7748/84-R.D.O., Hyderabad has been placed on record. For better understanding I may reproduce the extract of the docket proceedings and it is thus:

29-2-1992	Both parties present. Evidence of Yousufuddin recorded posted for cross examination of the respondent. Case posted to 13.3.1992.
13-3-1992	Adjourned
14-5-1992	The counsel for the respondent requested to re-open the trial afresh instead of adopting the same evidence given by the petitioner in view of AIR 1974 SC 1. Hence, the petitioner may be asked to depose afresh on 11.6.1992.
11.6.1992	Adjourned
11.8.1992	Sri.S.L.N.Chary filed Vakalat for respondents. Notice may be issued to petitioner call on 27.8.1992.
27.8.1992	Case called. The Advocate S.L.N.Chary is present and argued the case. The other party is absent. In spite of issue of notices. As one more chance is given to appear in this court please issue notice. Posted to 17.9.1992.
17-9-1992	Case called. The Advocate S.L.N.Chary is present and argued the case. The other party is absent, in spite of issue of notices. As one more chance is given to appear in this court on 29.9.1992.
29.9.1992	Case called. Advocate S.L.N.Chary is present and concluded arguments. The other party is absent, one more chance is given to appear on 15.10.1992. Please issue notices. (the draft notices was put up on 30-9-1992 and were dispatched on 7.10.1992. There is an endorsement on the office copy of the notice as “served copy through T.Narsinga Rao, Attender”. The notice was addressed to Narayan Rao Deshpande, Advocate to the appellant).
15-10-1992	RDO is otherwise busy, posted to 12.11.1992.
12.11.1992	Case called. The objection petitioner (appellant before the Collector) is absent and did not represent their case in spite of several notices. The counsel for the petitioner is present. Heard the arguments. Reserved for orders.
16.11.1992	Final order pronounced in this court today i.e., on 16.11.1992 in an open court.
	Please send a copy of order to Special Officer, ULC, Hyderabad for taking further action from his side.
	Since, no further action is to be taken by Special Officer no notice is issued and file is closed.

It is explicit from the above docket proceedings that the 2nd respondent heard arguments of the parties on 12.11.1992 and reserved the case for orders. Thereafter he passed orders on 16.11.1992. There is no material on record to show that the date of pronouncement of the order is notified or copy of the order is communicated to the writ petitioner after the pronouncement. The writ petitioner has specifically pleaded in the application filed before the appellate authority to condone delay in

filing the appeal that the date of pronouncement of the order was neither notified nor order of the copy was communicated to him and that he came to know of the order only in December, 1984. The 1st respondent has not taken note of the reasons assigned by the petitioner for condonation of delay. The order passed by the 1st respondent reads as follows:

> " 1. This is an appeal filed by Sri.Mohd.Farooq Sultana through her G.P.A. u/s 24 of A.P.(T.A) Abolition of Inams Act, 1954 against the orders passed by R.D.O., Hyderabad in cae No.B/7748/84, dated 16.11.1992 in respect of Sy.No.93 admeasuring Ac.3.34 gts situated at Kandikal village, Bandlaguda Mandal, Hyderabad District.
>
> 2. The present application is filed to condone delay of 632 days for filing appeal. The case was taken up for hearing to decide the condonation of delay.
>
> 3. The appellant failed to explain day to day delay with proper grounds and no material papers are placed before this court in support of claim to condone the delay.
>
> 4. The grounds of application for condonation of delay have no merits and deserve no consideration.
>
> 5. Therefore, application/petition to condone the delay is dismissed."

It is manifest from the order that the appellate authority has not exercised his jurisdiction properly. He has not adverted to the reasons assigned in the delay condonation petition. He did not refer the proceedings sheet maintained by 2nd respondent to know whether the plea taken by the writ petitioner is substantiated. Indeed during the course of hearing of the writ petition, the learned Government Pleader for Revenue appearing for respondents 1 and 2 has produced the original records which contained the proceedings sheet of 2nd respondent. The 2nd respondent heard the arguments on 12.11.1997 and reserved the case for orders. He neither notified the date of pronouncement of the orders or served the copy of the order after pronouncement the order. Therefore, the petitioner has offered sufficient reasons for condonation of delay in filing the appeal. The 1st respondent has not exercised the jurisdiction properly and thereby erred in dismissing the application filed to condone delay of 632 days in preferring an appeal.

8. Accordingly, the writ petition is allowed setting aside the impugned order dated 30-3-2002 passed in proceedings No.B2/6127/1998 on the file of Joint Collector, Hyderabad District-1st respondent and consequently the delay in filing the appeal against the order passed by 2nd respondent is allowed. Accordingly, 1st respondent is directed to take the appeal on file and dispose it of on merits. No costs.

Dated: 22-08-2005. (B.Seshasayana Reddy, J)

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